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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/510,032	10/01/2004	Eric Bercklouw	2001-1352	4666
466 7590 07/23/2007 YOUNG & THOMPSON 745 SOUTH 23RD STREET 2ND FLOOR ARLINGTON, VA 22202			EXAMINER GETTMAN, CHRISTINA DANIELLE	
			ART UNIT 3734	PAPER NUMBER
			MAIL DATE 07/23/2007	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

**Office Action Summary**

Application No.

10/510,032

Applicant(s)

BERREKLOUW, ERIC

Examiner

Christina D. Gettman

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 01 October 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 59-84 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 59-84 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 01 October 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 59-84 are rejected under 35 U.S.C. 103(a) as being unpatentable over Abrams et al. (U.S. Patent No. 6,740,098) in view of Kubota et al. (U.S. Patent No. 5,154,723). Abrams et al. disclose the invention substantially as claimed including an assembly with a stabilizer (ref. 80, Fig. 2) and an instrument (ref. 20, Fig. 2), the instrument being inserted into a passage surrounded by tissue, the stabilizer having one or more suction nozzles (ref. 90, Fig. 2) running in the shape of a loop, the instrument having a head section (ref. 40, Fig. 2), the instrument and stabilizer each having a stop (ref. 435, ref. 455, and ref. 485, Fig. 22 acts as stops), the instrument being an applicator for applying a fixing device (ref. 420, Fig. 22), the stabilizer provided with a guide on which the instrument stop is provided, the guide extending transversely to the loop (guide moves laterally along the longitudinal axis), the stabilizer having a working duct with one or more suction nozzles (ref. 515, Fig. 22), the guide being at the proximal end of the working duct, one or more suction nozzles being in the axial, radially outward, radially inward, or obliquely outwards direction (it would be obvious to change the shape of the nozzles to get the desired effect) with respect to the loop shape, the suction nozzles adapted to be in the shape of the tissue, the fixing device having flange

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fingers (ref. 50, Fig. 2) there upon, and the applicator having an elongated support member and an obstructing member. Abrams et al. does not disclose there being a scale on the guide with a zero point. Kubota et al. discloses a guide on a stabilizer that is equipped with a scale (ref. 90b, Fig. 2) having a reference (or zero) point (ref. 86a, Fig. 2, is the reference line that can line up with the top zero point of the scale) for the purpose of designating the stop position of the instrument and stabilizer. Therefore, it would have been obvious to one having ordinary skill in the art at the time of the invention to have modified the guide of Abrams et al. with a scale having a zero point in order to aid the surgeon in identifying where the correct stop point location is for the instrument and stabilizer. It is well-known in the art to add sensors and markers to medical instruments in order to provide for an additional guide, or navigation means, to locate the instrument within the body. Therefore, it would have also been obvious to one having ordinary skill in the art to have modified Abrams et al. and Kubota et al. with a marker and sensor to easily navigate the instrument through the body to the correct location.

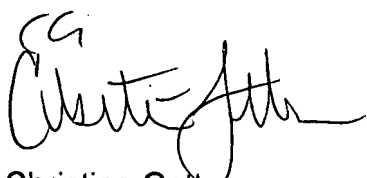
### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Christina D. Gettman whose telephone number is 571-272-3128. The examiner can normally be reached on Monday-Friday 7:15 am to 3:45 pm.

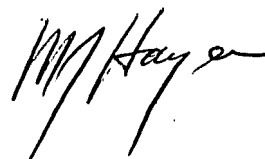
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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Hayes can be reached on 571-272-4959. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



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571-272-3128



MICHAEL J. HAYES  
SUPERVISORY PATENT EXAMINER